

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Cause No. 1:12-cr-0141-WTL-MJD
)	
JOSUE TAPIA-ROMAN,)	- 05
)	
Defendant.)	

REPORT AND RECOMMENDATION

On February 7, 2019, the Court held a hearing on the Petition for Warrant or Summons for Offender Under Supervision filed on January 23, 2019. Defendant Tapia-Roman appeared in person with his appointed counsel William Dazey. The government appeared by Kathryn Olivier, Assistant United States Attorney. U. S. Parole and Probation appeared by Officer Angela Smith.

The Court conducted the following procedures in accordance with Fed. R. Crim. P. 32.1(a)(1) and 18 U.S.C. § 3583:

1. The Court advised Defendant Tapia-Roman of his rights and provided him with a copy of the petition. Defendant Tapia-Roman orally waived his right to a preliminary hearing.
2. After being placed under oath, Defendant Tapia-Roman admitted violations 1, 2, 3, 4, 5, and 6. [Docket No. 477.]
3. The allegations to which Defendant admitted, as fully set forth in the petition, are:

**Violation
Number**

Nature of Noncompliance

- 1 **“The defendant shall not commit another federal, state or local crime.”**

On January 2, 2019, charges were filed (49G13-1901-CM-000137) against the offender stemming from a law enforcement encounter on May 12, 2018, for Driving While Suspended and Knowingly and Intentionally Operating a Vehicle Having Never Received a License. He is scheduled to appear for an initial hearing on March 28, 2019.

Mr. Tapia-Roman was also arrested on June 3, 2018, for Possession of Marijuana and Paraphernalia. Charges were ultimately not filed on this case. This officer addressed this arrest and illegal conduct by modifying his conditions to add Moral Reconation Therapy (MRT), which was approved on June 25, 2018.

- 2 **“The defendant shall not use or possess controlled substances or paraphernalia.”**

Mr. Tapia-Roman was arrested by Indianapolis Metropolitan Police Department on June 3, 2018, for Possession of Marijuana and Paraphernalia. This case was not filed, but on July 25, 2018, he submitted a urine specimen that yielded positive for cannabinoids. He admitted smoking marijuana two or three days prior. He admitted using "clean urine" to elude his drug testing requirements. He advised he likes to smoke and does not see a problem with marijuana use.

- 3 **“The defendant shall participate in a substance abuse treatment program at the direction of the probation officer.”**

Following a positive test for marijuana on July 25, 2018, this officer referred the offender to a dual diagnosis therapy (mental health and substance abuse) with Anna Caldwell at Volunteers of America (VOA) on August 6, 2018. He was scheduled for his assessment on September 7, 2018, but missed his appointment. He was rescheduled and attended the session on September 18, 2018. The contract with VOA was terminated on October 1, 2018, at which time he was referred to Indianapolis Treatment Center for an assessment. He missed appointments for assessments on October 24, November 21, 2018; after which he never rescheduled. He was confronted about this on several occasions but again on January 14, 2019. He was instructed to report to the center on January 16, 2019, to get set up but to date he has still not made contact with the agency.

- 4 **“You shall participate in a mental health treatment program, as approved by the probation officer, and abide by the rules of that program.”**

This condition was added on July 30, 2018, after the offender reported suicidal thoughts following non-compliance with MRT, failure to report a change of address and a positive urine screen. This officer referred him to a dual diagnosis therapy (mental health and substance abuse) with Anna Caldwell at Volunteers of America on August 6, 2018. He was scheduled for his assessment on September 7, 2018, but missed his appointment. He was rescheduled and attended the session on September 18, 2018. The contract with VOA was terminated on October 1, 2018, at which time he was referred to Indianapolis Treatment Center for an assessment. He missed appointments for assessments on October 24, November 21, 2018; after which he never rescheduled. He was confronted about this on several occasions but again on January 14, 2019. He was instructed to report to the center on January 16, 2019, to get set up but to date he has still not made contact with the agency.

- 5 **“The defendant shall participate in cognitive behavioral program, such as Moral Reconation Therapy (MRT), at the direction of the probation officer and abide by the rules of the program.”**

Mr. Tapia-Roman was arrested on June 3, 2018, for Possession of Marijuana and Paraphernalia. Charges were ultimately not filed on this case. This officer addressed this conduct by modifying his conditions to add Moral Reconation Therapy (MRT) condition to address his consistent pattern of negative thinking and poor choices. He began MRT on July 10, 2018. He has missed a total of eight sessions and three of those have been in January 2019. He was terminated on January 22, 2019, due to his lack of attendance. During his time in MRT, Mr. Tapia-Roman has been living at the residential reentry center that is only a few blocks away from the courthouse where MRT is held. His excuse for missing MRT has been because he was sleeping or overslept. On many of the dates he has attended he has not completed his homework and after all of this time in the program he is only on Step 8 of 12 steps.

- 6 **“You shall reside in a residential reentry center for a term of up to 180 days. You shall abide by the rules and regulations of the facility.”**

Mr. Tapia-Roman began his RRC placement on August 2, 2018, following a modification signed by the Court on July 30, 2018. He was placed at the RRC to address failure to report a change of address, employment, treatment concerns and behavioral issues. While living at the RRC, he received eight write ups for the following incidents: January 20, 2019, failure to provide a urine screen; January 1, 2019, being out of place while away on a pass; December 9, 2018, stealing food from the vending

machine; December 5, 2018, smoking in a prohibited area; December 3, 2018, possessing an unauthorized cell phone; November 12, 2018, failure to perform chores; October 24, 2018, possessing unauthorized medication; and October 20, 2018, failure to pay subsistence. He is scheduled to release to his mother's home on January 26, 2019, after residing at the RRC for six months.

4. The parties stipulated that:

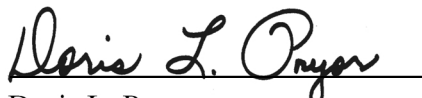
- (a) The highest grade of violation is a Grade C violation.
- (b) Defendant's criminal history category is I.
- (c) The range of imprisonment applicable upon revocation of supervised release, therefore, is 3 to 9 months' imprisonment.

5. Government argued a sentence of six (6) months with no supervised release to follow. Defendant argued for a lesser sentence with no supervised release to follow.

The Magistrate Judge, having considered the factors in 18 U.S.C. § 3553(a), and as more fully set forth on the record, finds that the Defendant violated the conditions in the petition, that his supervised release should be revoked, and that he should be sentenced to the custody of the Attorney General or his designee for a period of three (3) months with no supervised release to follow. The Defendant is to be taken into custody immediately pending the District Judge's action on this Report and Recommendation.

The parties are hereby notified that the District Judge may reconsider any matter assigned to a Magistrate Judge. The parties have fourteen days after being served a copy of this Report and Recommendation to serve and file written objections with the District Judge.

Date: 2/14/2019


Doris L. Pryor
United States Magistrate Judge
Southern District of Indiana

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